

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

ALTURO PASCO,

Petitioner

v.

CORPORAL CHRIS LEBLANC,

Respondents

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1:04-CV-098 (WLS)

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Richard L. Hodge (Doc. 42), filed on February 17, 2006. It is recommended that Defendant's Motion for Summary Judgment (Doc. 28) be granted and Plaintiff's Motion for Summary Judgment (Doc. 38) be denied. It appears as though Plaintiff's objections were not timely filed in that they were not signed until March 7, 2006, and were not received and docketed by the Clerk until March 13, 2006, well past the ten-day deadline, including days for mailing.

In his recommendation, Judge Hodge found that Defendant satisfied his initial burden to demonstrate there was no material issue of fact in this case. (Doc. 42). Relying on Sandin v. Connor, 515 U.S. 472 (1995), the Magistrate Judge found that "any claim that Plaintiff was disciplined without due process...is simply an attack on the procedures and standards used in imposing prison discipline and...can no longer be held to implicate the Due Process clause. *Id.* Regarding Plaintiff's challenges to the use of restraints as an unconstitutional exercise of excessive force in violation of the Eighth Amendment, the Magistrate Judge found that the "undisputed circumstances of [Plaintiff's] restraint evidence the infliction of no physical injury and the limited use of restraints in the face of a perceived violation of jail rules or orders." *Id.* Therefore, he found that Plaintiff failed to prove that "force was applied...maliciously and sadistically for the very purpose of causing harm. *Id.* (quoting Whitley v. Albers, 475 U.S. 312,

320-21 (1986). Accordingly, it is recommended that Defendant's Motion for Summary Judgment (Doc. 28) be granted and Plaintiff's Motion for Summary Judgment (Doc. 38) be denied. In his objections, Plaintiff reiterates facts and arguments made in his response to Defendant's Motion and in support of his own Motion; the same which were addressed by the Magistrate Judge in his Recommendation. (*See* Doc. 42, *compare* Docs. 32, 38). Additionally, as stated above, Plaintiff's objections are untimely. The Court further finds them without merit and are overruled accordingly.

Upon full review and consideration upon the record, the Court finds that the Report and Recommendation (Doc. 42) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the findings made and the conclusions reached herein. Accordingly, Defendant's Motion for Summary Judgment (Doc. 28) is **GRANTED**; and Plaintiff's Motion for Summary Judgment (Doc. 38) is **DENIED**.

SO ORDERED, this 28th day of March, 2006.

/s/W. Louis Sands
W. LOUIS SANDS, CHIEF JUDGE
UNITED STATES DISTRICT COURT